

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 3
(MC2010-28_CP2010-71)
Negotiated Service Agreement

Docket No. CP2017-269

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING A
FUNCTIONALLY EQUIVALENT
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(August 23, 2017)

The Public Representative hereby provides comments pursuant to the Commission's Notice Initiating Docket No. CP2017-269 (Commission Notice).¹ The Commission established the above-referenced dockets to receive comments on a Postal Service Notices filing for an additional Global Expedited Package Services 3 (GEPS 3) Agreement (Postal Service GEPS 3 Notice).²

Agreements included within the GEPS product offer incentive pricing to mailers who send items directly to foreign destinations using Priority Mail Express International (PMEI), Priority Mail International (PMI), First Class Package International Service (FCPIS) or any or all of these services. See, Mail Classification Schedule (MCS), at 524. Prices offered pursuant to a GEPS agreement may differ depending upon the volume or postage commitments made by the mailers. Id. To qualify for a GEPS agreement (Agreement), a business mailer must be capable of paying an average of

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement (NSA) Filings, August 17, 2017 (Commission Notice).

² See, Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment Of Materials Filed Under Seal (August 16, 2017).

\$200,000 per year international postage to the Postal Service over the life of the contract.³

In Order No. 86, the Commission established GEPS as a product on the competitive product list.⁴ Prices and classifications not of general applicability for GEPS agreements were previously established by Governors' Decision No. 08-7.⁵ The Commission subsequently approved the addition of the GEPS 3 product to the competitive product list (MC2010-28), and included a GEPS 3 agreement (CP2010-71) within that product, which would serve as the baseline agreement for functional equivalency comparisons with future agreements.⁶ Since the addition of the GEPS 3 product to the competitive product list, the Commission has determined that additional GEPS 3 agreements were functionally equivalent to the baseline agreement and should be included in the GEPS 3 (MC2010-28) product.

The Postal Service states that the Agreement is functionally equivalent in all pertinent respects to the baseline agreement and is in compliance with the requirements of 39 U.S.C. § 3633. Postal Service's Notice, at 3-7. The Postal Service therefore requests that the Agreement be added to the GEPS 3 product group. *Id.*

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the Agreement, and the supporting financial model filed under seal. Based upon his review, he concludes the Agreement is functionally equivalent to the baseline agreement for the GEPS 3 product. In addition, it appears that the negotiated prices in the Agreement should generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633.

³ See PRC, Mail Classification Schedule (MCS), posted January 22, 2017 (with revisions through: June 23, 2017), available at <http://www.prc.gov/mail-classification-schedule>, at 522-528.

⁴ Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

⁵ See Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008 (Governors' Decision No. 08-7). A redacted copy of the Governors' Decision was also filed as Attachment 3 to the Postal Service's Notice. An unredacted copy of the Governors' Decision was filed previously under seal. See Docket No. CP2008-4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Service Contracts, May 20, 2008.

⁶ Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503).

Functional Equivalence. The Postal Service asserts that the Agreement shares similar cost and market characteristics as those of the baseline GEPS 3 agreement. Postal Service's Notice, at 3-5. The Postal Service identifies some minor differences between the Agreement and the baseline agreement. *Id.* at 6-7. Most of these differences consist of changes similar to those included in other recent GEPS 3 agreements, e.g., are specific to the customer (e.g., the customer's name and address).

The Postal Service maintains that these differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the Agreement. Postal Service's Notice at 7. The Public Representative reviewed the contract terms and concludes that the Agreement exhibits similar cost and market characteristics as the baseline agreement. Therefore, he concurs with the Postal Service that the Agreement is functionally equivalent to the baseline agreement and should be added to the GEPS 3 product.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; must ensure that each competitive product covers its attributable costs; and must ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

As presented, the Postal Service's financial model does not directly address whether the addition of the Agreement to the GEPS 3 product will result in full cost coverage of the discounted and non-discounted products used in the NSA, as required by 39 U.S.C. § 3633(a)(2). The Public Representative is satisfied that that the negotiated rates in the Agreement will generate revenue sufficient to cover the Agreement's attributable costs, after reviewing the Postal Service's financial model. Consequently, this NSA will not cause the overall products used to comprise the Agreement will not cause to fall below 100 percent cost coverage.⁷ Accordingly, the addition of the Agreement to the non-discounted product(s) should allow the GEPS 3

⁷ In the FY 2016 Annual Compliance Determination (ACD) Report, the Commission determined that the GEPS 3 and other Outbound International Products covered their attributable costs. See Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 86.

product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). The Public Representative also concludes that the addition of the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share to the Postal Service's institutional costs towards the recovery of the Postal Service's institutional costs, consistent with 39 U.S.C. § 3633(a)(3).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

_____/s
Lawrence Fenster
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6862
lawrence.fenster@prc.gov